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No. 07-1254

Supreme Court, U.S.
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In The
Supreme Court of the United States

GLENN F. STRAUB,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR THE PETITIONER

The Eleventh Circuit held in this case that a conviction for indirect criminal contempt survives a determination by a district court that it has no subject matter jurisdiction even if the contempt arises from an order that was not necessary to maintain the status quo while the court determined if it had jurisdiction. Respondent contends that certiorari is not warranted because criminal contempt convictions always survive a determination that a federal court does not have subject matter jurisdiction. However, each of its arguments against certiorari falls short. First, this Court in *United States v. United Mine Workers*, 330 U.S. 258, 293-95 (1947), did not rule that all criminal convictions must be upheld when someone fails to obey an order of a court that has no jurisdiction. Instead, this Court couched its ruling in an analysis of whether a district court's ruling was necessary to maintain the status quo while it was determining jurisdiction. Second, there is a distinction between allowing the imposition of Rule 11, Fed.R.Civ.P., sanctions to survive a determination that a federal court has no jurisdiction as decided in *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) and a determination of indirect criminal contempt. Finally, the Eleventh Circuit's determination in this case is in conflict with this Court's determination in *Ex parte Fisk*, 113 U.S. 713 (1885). Accordingly, certiorari should be granted.

1. Article III courts have jurisdiction only to hear "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1; *Allen v. Wright*, 468 U.S. 737, 750 (1984). With few exceptions, exercises of judicial power by Article III courts must derive from this constitutional grant. Actions taken in excess of those powers are null and void because actions taken without such jurisdiction are an "usurp[ation of] judicial forms and facilities," *Mine Workers*, 330 U.S. at 309. It has been established law for over 125 years that a district court must have subject matter jurisdiction over the suit before it may issue a valid contempt order. *See, e.g., Ex parte Rowland*, 104 U.S. (14 Otto) 604, 612 (1881). When it acts in excess of its jurisdiction, the order punishing a person for contempt is void. *Id.* at 612, 617-18; *see also In re Burrus*, 136 U.S. 586, 597 (1890); *In re Sawyer*, 124 U.S. 200, 221-22 (1888); *Ex parte Fisk*, 113 U.S. 713, 726 (1885). Therefore, the rule is that a contempt order entered by a court without jurisdiction must be reversed. The exception to the rule, as annunciated in *Mine Workers*, is that a party can be held in contempt for violating an order necessary for maintaining the status quo while the district court determines whether it has jurisdiction. Respondent contends that the exception must now swallow the rule.

Respondent attempts to expand this Court's ruling in *Mine Workers*. In that case, this Court reasoned that a district court has the inherent authority to maintain the status quo while it takes the time necessary to determine if it has jurisdiction, and

it can hold a party in criminal contempt for violation of its lawful orders while determining whether it has jurisdiction. Respondent acknowledges that *Mine Workers* considered a criminal contempt conviction that was entered **while** the district court was determining that it lacked jurisdiction. Respondent, however, attempts to shoehorn this Court's ruling in *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992), which considered Rule 11 sanctions, into the analysis of indirect criminal contempt rulings. Respondent concludes that all contempt violations must survive a later determination by a district court that it lacks subject matter jurisdiction. However, the rule adopted by the Eleventh Circuit in this case and espoused by Respondent is an improper expansion of this Court's analysis in *Mine Workers*.

Willy involved a party who repeatedly failed to follow court rulings regarding rules of procedure. *Willy*, 503 U.S. at 131. This Court reasoned, in relevant part, that Rule 11 sanctions survive a later determination that a court lacked jurisdiction because a Rule 11 determination does not go to the merits of the case. Respondent is silent on the issue of whether the order in question in this case went to the merits of the case. In fact, the district court's order in this case was effectively a ruling on the merits. The effect of the district court's orders was to give the Hull owners all the relief they could have asked for on the merits of the case, *i.e.*, possession of the Hull and the extinguishment of a possessory lien, while the court was still unsure of whether it had

jurisdiction. Therefore, this Court's analysis of Rule 11 in *Willy* is inapplicable to the question raised in this case, *i.e.*, whether a conviction for criminal contempt can stand where the order in question was not necessary to maintain the status quo.

The status quo at the time that the Hull in question was arrested was that the Hull had been languishing at the Broward Yachts facility and there was no simple method to remove it. The district court ultimately ordered that the Hull owners could take the equipment of Broward Yachts and ordered Straub to stay away from his business while the Hull was being removed.

Respondent effectively argues that any time a party violates a court order, a court has the right to vindicate its authority and punish the party regardless of whether it later determines that the court order that was violated was not within its jurisdiction. But Respondent falls significantly short of explaining why a civil contemnor who continues to disregard a court's authority should be treated differently from someone who is charged with indirect criminal contempt in circumstances in which the district court later determines that it lacks subject matter jurisdiction. This Court has noted that there is an elusive distinction between civil and criminal contempt. *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829-30 (1994). There is no sensible reason why indirect criminal contempt should be treated differently than civil contempt under the facts of this case.

The proper analysis does not turn on whether a party defied a court order, but instead is directed to whether the order itself was necessary to maintain the status quo while the court took the time to determine if it had jurisdiction. In this case, without doubt the district court order that Straub allegedly violated affected the merits of the case and went beyond merely maintaining the status quo. When, as in this case, it is determined that the lawsuit should not have been pending because the district court lacked subject matter jurisdiction, then an order falls if it is not narrowly tailored to maintain the status quo while the district court determines its jurisdiction. And, if the order exceeds the judge's authority, the contempt judgment for its disobedience must *a fortiori* be vacated.

2. Respondent asserts that the district court was maintaining the status quo when it entered the orders in question because the parties agreed to substitute a bond for the Hull. The district court certainly did not have authority, while it was determining its own jurisdiction, to enter orders that effectively closed down the Broward Yachts' business for half a day, kept Straub away from his business, and allowed the Hull owners to use Broward Yachts' property. There certainly is no precedent to allow such actions. The fact that the parties agreed to substitute a bond for the vessel is of no moment because the Hull owners simply were unable to remove the Hull for financial or other practical reasons without the district court taking the extraordinary

step of effectively allowing the Hull owners to take over Straub's business for more than half a day.

It is without question that the district court had no authority to assist in the removal of the Hull because it required the district court to take actions that were beyond determining whether it had jurisdiction over the matter. Stated a different way, the district court's authority transferred from the Hull to the bond while it decided whether it had jurisdiction over the case. Any further action with respect to the Hull that would involve more than maintaining the status quo would require the district court to have jurisdiction over the controversy.

3. Respondent's effort to distinguish *Ex parte Fisk*, 113 U.S. 713 is unavailing. In *Ex parte Fisk*, this Court held that, where an action had been commenced in the state court and removed to federal court, a prior order of the state court requiring an examination that was peculiar to state law could not be required in federal court and, therefore, was beyond the authority of the federal court. *Id.* at 726. *Ex parte Fiske* stands for the proposition that an order that is beyond the district court's authority cannot be the basis for a contempt conviction. Respondent glosses over this proposition by suggesting that the district court had authority to order the removal of the Hull and to order Straub not to appear indefinitely at his place of business while the Hull was being removed, but Respondent cannot cite to any authority allowing the district court to make such

orders when it is determining if it has jurisdiction. There simply is no such authority.

Accordingly, this Court should grant the Petition for Writ of Certiorari because the Eleventh Circuit's opinion conflicts with prior decisions by this Court in which it has ruled that a district court's order is invalid when it does not have jurisdiction and the order is not necessary to maintain the status quo while the district court contemplates whether it has jurisdiction.

CONCLUSION

For these reasons and the reasons discussed in the petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted on behalf of Glenn F. Staub this 30th day of September 2008.

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